# United States Department of Labor
# Employees' Compensation Appeals Board

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| **S.C., Appellant** | ) | |
| **and** | ) | **Docket No. 10-2351** |
| | ) | **Issued: August 5, 2011** |
| **DEPARTMENT OF THE ARMY, WATERVLIET ARSENAL, Watervliet, NY, Employer** | ) | |

*Appearances:*
*Appellant, pro se*
*Office of Solicitor*, for the Director

*Case Submitted on the Record,*

## DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

### ***JURISDICTION***

On September 21, 2010 appellant filed a timely appeal from a March 23, 2010 decision of the Office of Workers' Compensation Programs (OWCP) denying an occupational condition. Pursuant to the Federal Employees' Compensation Act (FECA)[1] and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the claim.

On appeal, appellant contends that OWCP misinterpreted his October 13, 2008 letter requesting a case status update as a claim for additional conditions.

### ***ISSUE***

The issue is whether appellant established that he sustained a neurologic bilateral lower extremity condition causally related to his accepted lumbar injuries.

[1] 5 U.S.C. § 8101 *et seq.*

## ***FACTUAL HISTORY***

This is appellant's fourth appeal before the Board. By decision and order issued on August 19, 2005,[2] the Board affirmed January 20 and July 1, 2004 OWCP decisions denying his claim for a recurrence of disability from August 12, 1994 to February 21, 1995 related to an accepted L1 spinal fracture, lumbago, left foot fracture, chondromalacia of the left patella[3] or a ruptured left anterior cruciate ligament. The facts of the case as set forth in the Board's prior decisions are incorporated by reference.[4] Appellant did not return to work.

In reports from May 3 to July 7, 2006, Dr. Matthew G. Zmurko, an attending Board-certified orthopedic surgeon, noted worsening bilateral lumbar radiculopathy. He obtained magnetic resonance imaging scan studies showing an old L1 compression fracture with spinal stenosis, L4-5 disc herniation and an L4-5 annular tear.

Dr. Luke V. Rigolosi, an attending Board-certified physiatrist, administered lumbar epidural injections from January 8, 2007 through December 23, 2009, authorized by OWCP.

In an October 13, 2008 letter, appellant asserted that his lumbar conditions had worsened, requiring epidural steroid injections and a back support.

On October 27, 2009 Dr. Rigolosi noted that appellant fell in "early August" when his left knee gave way. He recommended medication for bilateral neuropathic lower extremity symptoms.

In a November 19, 2009 letter, OWCP asked Dr. Rigolosi to provide additional information regarding any neurologic condition of the lower extremities. It requested medical rationale explaining the causal relationship between the neurologic condition and the accepted closed L1 fracture and lumbago. Dr. Rigolosi responded by a December 7, 2009 report diagnosing "low back pain." He opined that "to a reasonable degree of medical certainty" appellant's back pain remained related to the accepted L1 fracture.

On February 24, 2010 Dr. Rigolosi observed weakness and numbness in appellant's right foot, although February 15, 2010 electromyography and nerve conduction velocity studies of the lower extremities were reported as normal. In a March 4, 2010 report, he recommended additional epidural steroid injections as appellant had developed flexion and extension difficulties in all toes of the right foot.

[2] Docket No. 04-2186 (issued August 19, 2005). The history of two prior appeals to the Board is set forth in Docket No.04-2186 (issued August 19, 2005).

[3] On May 22, 2008 Dr. Richard L. Katz, an attending Board-certified orthopedic surgeon, performed a repeat left knee arthroscopy and chondroplasty of the left medial femoral condyle.

[4] During the pendency of the prior appeal, OWCP issued an October 1, 2004 decision denying wage-loss compensation beginning October 31, 1995. This decision is not before the Board on the present appeal.

By decision dated March 23, 2010, OWCP denied appellant's claim for a bilateral lower extremity condition related to the accepted lumbar injuries finding that causal relationship was not established. It found that Dr. Rigolosi did not provide sufficient medical rationale explaining how or why the accepted lumbar fracture caused a neurologic condition of the lower extremities.

## ***LEGAL PRECEDENT***

An employee seeking benefits under FECA[5] has the burden of establishing the essential elements of his or her claim, including the fact that the individual is an "employee of the United States" within the meaning of the Act; that the claim was filed within the applicable time limitation; that an injury was sustained while in the performance of duty as alleged; and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.[6] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.[7]

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.

The medical evidence required to establish causal relationship is generally rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medial certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[8]

## ***ANALYSIS***

OWCP accepted that appellant sustained an L1 spinal fracture, lumbago, left foot fracture, a ruptured left anterior cruciate ligament and chondromalacia of the left patella. On October 27, 2009 Dr. Rigolosi, a Board-certified physiatrist, mentioned bilateral neuropathic lower extremity symptoms after appellant fell in August 2009 when his left knee gave way. In a

[5] 5 U.S.C. §§ 8101-8193.

[6] *Joe D. Cameron*, 41 ECAB 153 (1989).

[7] *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999).

[8] *Solomon Polen*, 51 ECAB 341 (2000).

December 7, 2009 report, he diagnosed chronic back pain. In February and March 2010, Dr. Rigolosi noted weakness and numbness in the right foot. The Board finds that the medical evidence is insufficient to establish a neurologic condition of the lower extremities related to the accepted lumber conditions.

In a November 19, 2009 letter, OWCP asked Dr. Rigolosi to provide medical rationale explaining any causal relationship between the accepted injuries and a neurologic condition of the lower extremities. Dr. Rigolosi's subsequent reports mention weakness and numbness in all toes of the right foot without addressing the cause of these symptoms. Although he opined on December 7, 2009 that the accepted L1 compression fracture caused appellant's low back pain, he did not provide medical rationale explaining how he came to this conclusion. Dr. Rigolosi did not address the accepted back injuries in detail or explain how they would cause a bilateral lower extremity condition or neurologic symptoms in the right foot. Without such rationale, his reports are of insufficient probative value to establish causal relationship.[9] The Board has held that pain is a general symptom and not a firm medical diagnosis.[10] The Board notes that Dr. Zmurko, an attending Board-certified orthopedic surgeon, diagnosed bilateral lumbar radiculopathy in May 2006, but did not provide medical rationale supporting causal relationship.

The Board finds that OWCP's March 23, 2010 decision denying a neurologic condition of the lower extremities is proper under the law and facts of this case. Appellant may submit additional evidence, together with a formal written request for reconsideration, to OWCP within one year of the Board's merit decision, pursuant to 5 U.S.C. § 8128(a).

On appeal, appellant asserts that OWCP misinterpreted his October 13, 2008 letter as a request to expand his claim. The record notes that the impetus for OWCP's November 19, 2009 letter to Dr. Rigolosi was his October 27, 2009 report mentioning a neuropathic condition affecting both lower extremities. The Board finds that OWCP's request for additional information regarding this new condition did not in any way prejudice appellant's case.

## ***CONCLUSION***

The Board finds that appellant has not established that he sustained a neurologic bilateral lower extremity condition in the performance of duty.

[9] *Deborah L. Beatty*, 54 ECAB 340 (2003).

[10] *C.F.*, Docket No. 08-1102 (issued October 10, 2008).

## ***ORDER***

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated March 23, 2010 is affirmed.

Issued: August 5, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board